

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
ORION REFINING CORPORATION	:	Case No. 03-11483 (MFW)
	:	
Debtor.	:	
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In re:	:	Adversary Proceeding No. 04-52447
	:	(MFW)
	:	
FLUOR ENTERPRISES, INC.	:	
	:	
Plaintiff	:	[Parallel Contested Matter Under Fed.R.
	:	Bankr. P. 9024 and Fed.R. Bank. P
	:	60(b)]
v.	:	
	:	
ORION REFINING CORP., CYPRESS, ASSOCIATES, LLC AS ORC DISTRIBUTION TRUST REPRESENTATIVES	:	
	:	
Defendant	:	
	:	
ORION REFINING CORPORATION	:	
	:	
Counter-Defendant	:	
	:	
v.	:	
	:	
FLUOR ENTERPRISES, INC.,	:	
	:	
Counter-Defendant	:	
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**CROSS-APPELLANT FLUOR ENTERPRISES, INC.'S DESIGNATION
OF RECORD AND STATEMENT OF ISSUES ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Fluor Enterprises, Inc. ("Fluor" or "Appellant") by and through its undersigned counsel, hereby designates the following items for inclusion in the record and states the issues to be presented on appeal from the Bankruptcy Court's Order, dated May 9, 2006 and entered

by the Court on May 10, 2006 (D.I. 69), Opinion, dated May 9, 2006 and entered by the Court on May 10, 2006 (D.I. 68) and the Bankruptcy Court's Order, dated July 20, 2007 and entered by the Court on July 20, 2007 (D.I. 1912; A.D.I. 137).

I. Designation of Record on Appeal

Fluor designates the following record items from Adversary Proceeding No. 04-52447 (MFW):

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
02/04/2004	1	Complaint by Fluor Enterprises, Inc. against Orion Refining Corporation (with attachments)
02/04/2004	3	Summons and Notice of Pretrial Conference
03/05/2004	4	Answer and Counterclaims of Orion Refining Corporation against Fluor Enterprises, Inc., filed by Orion Refining Corporation
03/08/2004	5	Initial Scheduling Order
03/25/2004	6	Answer of Fluor Enterprises, Inc. to Counterclaims, filed by Fluor Enterprises
04/13/2004	9	Motion for Partial Summary Judgment filed by Orion Refining Corporation (with attachments)
04/13/2004	10	Defendant's Opening Brief in Support of Its Motion for Partial Summary Judgment, filed by Orion Refining Corporation (with attachments)
04/13/2004	11	Affidavit of Richard S. Rayzor filed by Orion Refining Corporation
04/13/2004	12	Affidavit of Eric E. Bluth filed by Orion Refining Corporation
04/22/2004	13	Stipulation Extending Time to Answer Motion For Partial

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
		Summary Judgment between Fluor Enterprises, Inc. and Orion Refining Corporation, filed by Fluor Enterprises, Inc.
05/12/2006	14	Notice of Lis Pendens (with attachments), filed by Fluor Enterprises, Inc.
05/14/2004	15	Fluor Enterprises, Inc.'s Motion to Strike the Affidavits of Richard S. Rayzor and Eric E. Bluth in Support of Defendant's Motion for partial Summary Judgment, filed by Fluor Enterprises, Inc.
05/14/2004	16	Fluor Enterprises, Inc.'s Opening Brief In Support of Its Motion to Strike, filed by Fluor Enterprises, Inc. (with attachments)
05/14/2004	18	Fluor's Motion for Partial Summary Judgment, filed by Fluor Enterprises, Inc.
05/14/2004	19	Memorandum of Law in Support of Fluor Enterprises, Inc.'s Motion for Partial Summary Judgment, filed by Fluor Enterprises, Inc. (with attachments)
05/14/2004	20	Plaintiff's Answering Brief in Opposition to Defendant's Motion for Partial Summary Judgment, filed by Fluor Enterprises, Inc. (with attachments)
05/27/2004	21	Amended Brief in Opposition to Defendant's Motion for Partial Summary Judgment, filed by Fluor Enterprises, Inc. (with attachments)
06/18/2004	25	Defendant's Reply Brief in Support of Its Motion for Partial Summary Judgment and Answering Brief in Response to Plaintiff's Motion for Partial Summary Judgment, filed by Orion Refining Corporation
06/18/2004	26	Affidavit of Steven L. Victor—filed by Orion Refining Corporation (with attachments)
06/18/2004	27	Supplemental Affidavit of Eric E. Bluth – filed by Orion

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
		Refining Corporation
06/18/2004	28	Supplemental Affidavit of Richard S. Rayzor, filed by Orion Refining Corporation (with Attachments)
06/18/2004	29	Defendants Response to Fluor Enterprises, Inc.'s Motion to Strike, filed by Orion Refining Corporation (with attachments)
07/20/2004	33	Amended Affidavit of Daniel Stinger in Support of Plaintiff's Amended Answering Brief in opposition to Defendant's Motion for Partial Summary Judgment, filed by Fluor Enterprises, Inc.
07/20/2004	34	Reply Brief in Support of Its Motion for Summary Judgment, filed by Fluor Enterprises, Inc. (with attachments)
10/18/2004	43	Scheduling Order (Amended and Stipulated) signed on 10/14/2004.
06/15/2005	49	Order Reassigning Adversary Proceedings to the Honorable Mary F. Walrath.
07/28/2005	54	Order (Third Amended Stipulated Scheduling).
10/13/2005	57	Order Approving Stipulation to Reassign Certain Contested Matter and Adversary Proceedings to the Honorable Mary F. Walrath and Granting Related Relief.
03/03/2006	62	Order Approving Fourth Amended Stipulated Scheduling Order
03/09/2006	63	Order Approving Stipulation to Reassign Certain Contested Matter and Adversary Proceedings to the Honorable Mary F. Walrath and Granting Related Relief.
04/06/2006	65	Notice of Agenda of Matters Scheduled of April 10, 2006 Hearing

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
05/10/2006	68	Opinion Granting Debtor Orion Refining Corp.'s Motion for Partial Summary Judgment and Denying Fluor Enterprises, Inc.'s Motion for Partial Summary Judgment
05/10/2006	69	Order Granting Debtor Orion Refining Corp.'s Motion for Partial Summary Judgment and Denying Fluor Enterprises, Inc.'s Motion for Partial Summary Judgment
05/19/2006	71	Notice of Appeal (AP-06-39) filed by Fluor Enterprises, Inc. (with attachments)
05/19/2006	72	Receipt of filing fee for Notice of Appeal
09/06/2006	79	Cypress Associated. LLC, as ORC Distribution Representative's Motion Pursuant To Rule 7054(A) For Express Direction For The Entry Of Judgment And Express Determination That There Is No Just Reason For Delay
09/06/2006	80	Cypress Associated. LLC, as ORC Distribution Representative's Opening Brief in Support of Motion Pursuant To Rule 7054(A) For Express Direction For The Entry Of Judgment And Express Determination That There Is No Just Reason For Delay
10/02/2006	81	Fluor Enterprises, Inc.'s Brief in Opposition to Orion Refining Corporation's Motion Pursuant to Rule 7054(a) for the Express Direction for the Entry of Judgment and Express Determination That There is No Just Reason for Delay
10/16/2006	82	Cypress Associated. LLC, as ORC Distribution Representative's Reply Brief In Support Of Motion Pursuant To Rule 7054(a) For The Express Direction For The Entry Of Judgment And Express Determination That There Is No Just Reason For Delay
11/21/2006	86	Memorandum Opinion Denying Motion for Express Determination That There is No Just Reason for Delay in Entry of Final Judgment on Counts I and IV of the

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
		Complaint of Fluor Enterprises, Inc.
11/21/2006	87	Order Denying Motion for Express Determination That There is No Just Reason for Delay in Entry of Final Judgment on Counts I and IV of the Complaint of Fluor Enterprises, Inc.
04/23/2007	114	Proposed Pretrial Order Regarding Claim of Fluor Enterprises, Inc.
05/02/2007	119	Joint Pretrial Order (Amended) Regarding Claim of Fluor Enterprises, Inc.
06/06/2007	126	Transcript of Motion Hearing and Trial Before Honorable Mary F. Walrath, Held on May 7, 2007
06/06/2007	127	Transcript of Motion Hearing and Trial Before Honorable Mary F. Walrath, Held on May 8, 2007
06/06/2007	128	Transcript of Motion Hearing and Trial Before Honorable Mary F. Walrath, Held on May 9, 2007
06/19/2007	129	Findings of Fact and Conclusions of Law and Order [Proposed By Fluor Enterprises, Inc.]
06/19/2007	130	Proposed Findings Of Fact And Conclusions Of Law Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative, Orion Refining Corporation
07/05/2007	133	Orion Refining Corporation's Reply Brief To Fluor Enterprises, Inc.'s Proposed Findings Of Fact And Conclusions Of Law
07/05/2007	134	Response by Fluor Enterprises, Inc. to ORC distribution Trust's Proposed Findings of Fact and Conclusions of Law
07/20/2007	135	Findings of Fact
07/20/2007	136	Opinion Granting Fluor Enterprises, Inc.'s Motion for Relief Previously entered Critical Fire and Trade Vendor

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
		Orders
07/20/2007	137	Order GRANTING Fluor Enterprises, Inc.'s Motion for Relief from Previously entered Critical Fire and Trade Vendor Orders
07/30/2007	138	Motion Of Cypress Associates, LLC, As ORC Distribution Trust Representative, For An Order (I) Granting Reconsideration, In Part, Of The Court's Findings Of Fact, Opinion And Order, Each Dated July 20, 2007, And (II) Upon Reconsideration, (A) Vacating That Portion Of The Opinion And Order Authorizing Fluor Enterprises, Inc. To Recover Pre-Judgment Interest And (B) Granting Related Relief
07/30/2007	139	Notice of Appeal (#BAP-07-82) Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative
08/09/2007	144	Statement Of Appellant Cypress Associates, LLC, As The ORC Distribution Trust Representative, Concerning Timing Of Filing And Service Of Its Designation Of The Items To Be Included In The Record On Appeal And Statement Of The Issues To Be Presented
08/09/2007	145	Cross Appeal (#BAP-07-85) by Fluor Enterprises, Inc.
08/13/2007	147	Motion to Intervene (A) in Adversary Proceeding No. 04-52447 and (B) in Motion by Fluor Enterprises, Inc. Filed June 3, 2004 for Relief from Previously Entered Critical Fire and Trade Vendor Orders Filed by Development Specialists, Inc.
08/13/2007	148	Brief of Movants, Development Specialists, Inc. and Steven L. Victor, in Support of Motion to Intervene (A) in Adversary Proceeding No. 04-52447 and (B) in Motion by Fluor Enterprises, Inc. Filed June 3, 2004 for Relief from Previously Entered Critical Fire and Trade Vendor Orders
08/13/2007	151	Fluor Enterprise, Inc.'s Response to Motion of Cypress

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
		Associates, LLC, as ORC Distribution Trust Representative for an Order 9I) Granting Reconsideration, in Part, of the Court's Findings of Fact, Opinion and Order, Each Dated July 20, 2007 and (II) upon Reconsideration, (A) Vacating that Portion of the Opinion and Order Authorizing Fluor Enterprises, Inc. to Recover Pre-Judgment Interest and (B) Granting Related Relief
07/20/2007	137	Order Granting Fluor Enterprises, Inc.'s Motion for Relief from Previously entered Critical Fire and Trade Vendor Orders
07/30/2007	139	Notice of Appeal 9#BAP-07-82) filed by Cypress Associates, LLC, as ORC Distribution Trust Representative (with attachments)
08/02/2007	142	Clerk's Notice Regarding Filing of Appeal
08/09/2007	144	Statement of Appellant Cypress Associates, LLC, as the ORC Distribution Trust Representative, Concerning Timing of Filing and Service of its Designation of the Items to be Included in the Record on Appeal and Statement of issues to be Presented
08/09/2007	145	Cross Appeal (#BAP-07-85) filed by Fluor Enterprises, Inc.
08/13/2007	150	Clerk's Notice Regarding Filing of Cross Appeal (#BAP-07-85)
08/14/2007	152	Receipt of Filing Fee for Cross Appeal

Fluor designates the following record items from the main bankruptcy proceeding, No. 03-11483(MFW):

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
05/14/2003	13	Motion to Pay Critical Trade Vendor Claims Debtor's Motion for Authority to Pay Prepetition Obligations of Certain Critical Vendors and Service Providers Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code filed by Orion Refining Corporation
05/14/2003	14	Motion to Pay Critical Trade Vendor Claims Debtor's Motion for Authority to Pay Certain Fixed, Liquidated and Undisputed Prepetition Claims of Fire Vendors, Mechanics and Materialmen filed by Orion Refining Corporation
05/15/2003	37	Order Authorizing the Debtor to Pay Prepetition Obligations of Certain Critical Vendors and Service Providers Pursuant to 11 U.S.C. Sections 105(a) and 363(b) signed in Court on 5/15/2003
05/15/2003	38	Order Authorizing the Debtor to Pay Certain Fixed, Liquidated and Undisputed prepetition Claims of Fire Vendors and Mechanics and materialmen Pursuant to 11 U.S.C. Sections 105(a) and 363(b) signed in Court on 5/15/2003
06/02/2003	156	Response to Debtor's Motion for Authority to Pay Certain Fixed, Liquidated and Undisputed Prepetition Claims of Fire Vendors, Mechanics and Materialmen, filed by Fluor Enterprises, Inc.
06/02/2003	157	Limited Objection to Final Order (I) Authorizing Debtor in Possession to (A) Obtain Postpetition Financing From General Electric Capital Corporation, as Agent, Pursuant to 11 U.S.C. Sections 105, 361, 362, 364(c)(1), 364(c)(2) 364(c)(3) and 364(d)(1), and (B) Utilize Cash Collateral Pursuant to 11 U.S.C. Section 363, (II) Granting Liens and Super-Priority Claims, and (III) Granting Adequate Protection to Prepetition Secured Lenders (related

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
		document 41) signed in Court, filed by Fluor Enterprises, Inc.
06/05/2003	204	Final Order Authorizing the Debtor to Pay Prepetition Obligations of Certain Critical Vendors and Service Providers -Order Signed in Court on 6/5/2003
06/05/2003	205	Final Order Authorizing the Debtor to Pay Certain Fixed, Liquidated and Undisputed Prepetition Claims of Fire Vendors, Mechanics and Materialmen -Order Signed in Court on 6/5/2005
06/06/2003	245	Transcript of Hearing held on May 15, 2003
06/20/2003	300	Transcript of Hearing held on June 5, 2003
06/03/04	1283	Motion for Relief from Previously Entered Critical Fire and Trade Vendor Orders, filed by Fluor Enterprises, Inc. (with attachments)
06/03/2004	1285	Motion to Allow Application Of Fluor Enterprises, Inc. To Transfer Adjudication Of Fluor Enterprises, Inc.'s Motion For Relief From Previously Entered Critical Fire And Trade Vendor Orders To The Honorable Mary F. Walrath, filed by Fluor Enterprises, Inc.
06/17/2004	1314	Objection Of Orion Refining Corporation To Application Of Fluor Enterprises, Inc. To Transfer Adjudication Of Fluor Enterprises, Inc.'s Motion For Relief From Previously Entered Critical Fire And Trade Vendor Orders To The Honorable Mary F. Walrath, filed by Orion Refining Corporation
09/24/2004	1486	Transcript of hearing held on September 14, 2004 before the Honorable Charles G. Case, II
06/06/2006	1788	Objection to Fluor Enterprises, Inc.'s Motion for Relief from Previously Entered Critical Fire and Trade Vendor Orders Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
07/03/2006	1794	Reply to Opposition of ORC Distribution Trust to Motion by Fluor Enterprises, Inc. for Relief from Previously Entered Critical Fire Vendor and Trade Vendor Orders and Request for Comprehensive Scheduling Order Filed by Fluor Enterprises, Inc.
07/13/2006	1802	Transcript Of Hearing Before The Honorable Mary F. Walrath, Held on July 7, 2006
07/19/2006	1804	Certification of Counsel Regarding Order Relating to Fluor Enterprises, Inc.'s Motion for Relief From Previously Entered Critical Fire and Trade Vendor Orders Filed by Fluor Enterprises, Inc.
07/19/2006	1805	Certification of Counsel Regarding The Debtor's Proposed Order Relating To Fluor Enterprises, Inc.'s Motion For Relief From Previously Entered Critical Fire And Trade Vendor Orders Filed by ORC Distribution Representative
07/20/2006	1806	Reply to Debtor's Certification of Counsel Regarding the Debtor's Proposed Order Relating to Fluor Enterprises, Inc.'s Motion for Relief From Previously Entered Critical Fire and Trade Vendor Orders Filed by Fluor Enterprises, Inc.
07/27/2006	1811	Order (REVISIONS BY THE COURT) Relating to Fluor Enterprises, Inc.'s Motion for Relief From Previously-Entered Critical Fire and Trade Vendor Orders
10/23/2006	1833	Motion For Summary Judgment Filed by Fluor Enterprises, Inc.
11/22/2006	1837	Brief in Opposition to the Motion by Fluor Enterprises, Inc. for Summary Judgment Filed by ORC Distribution Representative
11/22/2006	1838	Affidavit of Thomas W. Briggs, Jr. Regarding Brief in Opposition to the Motion by Fluor Enterprises, Inc. for Summary Judgment Filed by ORC Distribution

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
		Representative
11/22/2009	1839	Affidavit of Steven L. Victor Regarding Motion by Fluor Enterprises, Inc. for Summary Judgment Filed by ORC Distribution Representative
11/22/2006	1840	The Compendium of Unreported Decisions Cited In The ORC Distribution Trust Representative's Brief in Opposition to The Motion By Fluor Enterprises, Inc. for Summary Judgment filed by ORC Distribution Representative
12/05/2006	1843	Reply to Brief in Opposition to Its Motion for Summary Judgment Filed by Fluor Enterprises, Inc.
12/08/2006	1845	Emergency Supplement to Reply to Brief in Opposition to Motion for Summary Judgment, in order to Present Newly Produced Documents Filed by Fluor Enterprises, Inc.
12/08/2006	1846	Affidavit of Kevin J. Mangan Regarding Emergency Supplement to Reply to Brief in Opposition to Motion for Summary Judgment, in order to Present Newly Produced Documents Filed by Fluor Enterprises, Inc.
12/11/2007	1847	Motion for Leave To File Response to Fluor Enterprises' Emergency Supplement to Present Newly Produced Documents Regarding Brief in Opposition to Motion for Summary Judgment Filed by ORC Distribution Representative Hearing
12/18/2006	1852	Order Granting Motion of the ORC Distribution Trust Representative for Leave to File Response to the Emergency Supplement to Reply by Fluor Enterprises, Inc. to Brief in Opposition to Fluor's Motion for Summary Judgment to Present Newly Produced Documents
12/21/2006	1854	Order Denying Motion For Summary Judgment Filed by Fluor Enterprises

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
12/28/2006	1856	Transcript of Hearing held on December 12, 2006 before the Honorable Mary F. Walrath
07/20/2007	1910	Findings of Fact and Conclusions of Law
07/20/2007	1911	Opinion GRANTING Fluor Enterprises, Inc.'s Motion for Relief from Previously entered Critical Fire and Trade Vendor Orders
07/20/2007	1912	Order GRANTING Fluor Enterprises, Inc.'s Motion for Relief from Previously entered Critical Fire and Trade Vendor Orders
07/30/2007	1913	Motion to Approve Order (I) Granting Reconsideration, In Part, Of The Court's Findings Of Fact, Opinion And Order, Each Dated July 20, 2007, And (II) Upon Reconsideration, (A) Vacating That Portion Of The Opinion And Order Authorizing Fluor Enterprises, Inc. To Recover Pre-Judgment Interest And (B) Granting Related Relief Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative
07/30/2007	1914	Notice of Appeal (<i>BAP-07-81</i>). Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative
08/09/2007	1917	Cross Appeal (<i>BAP-07-84</i>). Filed by Fluor Enterprises, Inc.
08/09/2007	1919	Statement Concerning Timing Of Filing And Service Of Designation Of Items To Be Included In The Record On Appeal And Statement Of The Issues To Be Presented Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative
08/13/2007	1921	Motion to Intervene (A) in Adversary Proceeding No. 04-52447 and (B) in Motion by Fluor Enterprises, Inc. Filed June 3, 2004 for Relief from Previously Entered Critical Fire and Trade Vendor Orders Filed by Development Specialists, Inc.

<u>Date</u>	<u>Docket Nos.</u>	<u>Record Items</u>
08/13/2007	1922	Brief in Support of Motion to Intervene (A) in Adversary Proceeding No. 04-52447 and (B) in Motion by Fluor Enterprises, Inc. Filed June 3, 2004 for Relief from Previously Entered Critical Fire and Trade Vendor Orders Filed by Development Specialists, Inc.,
08/13/2007	1924	Response to Motion of Cypress Associates, LLC as ORC Distribution Trust Representative, for an Order (I) Granting Reconsideration in Part of the Court's Findings of Fact, Opinion and Order Each Dated July 20, 2007 and (II) Upon Reconsideration (A) Vacating that Portion of the Opinion and Order Authorizing Fluor Enterprises, Inc. to Recover Pre-Judgment Interest and (B) Granting Related Relief Filed by Fluor Enterprises, Inc.

II. Statement of Issues

1. Whether the Bankruptcy Court erred in granting the Motion for Partial Summary Judgment filed by Orion Refining Corporation.
2. Whether the Bankruptcy Court erred in denying the Motion for Partial Summary Judgment filed by Fluor Enterprises, Inc.
3. Whether the Bankruptcy Court erred in ruling that Fluor does not have a claim of privilege under the Louisiana Private Works Act.
4. Whether the Bankruptcy Court erred in ruling that Fluor waived its claim of privilege under the Louisiana Private Works Act pursuant to section 5.6 of the Master Service Agreement ("MSA").
5. Whether the Bankruptcy Court erred in ruling that section 5.6 of the MSA is enforceable notwithstanding the Debtors' fraudulent activity.

6. Whether the Bankruptcy Court erred in failing to impose a constructive trust for the benefit of Fluor.

Respectfully submitted,

Fluor Enterprises, Inc.
By its attorneys,

Dated: August 20, 2007

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